

Date: June 4, 2013

From: Director, Procurement Policy and Warrant Management Service (003A2A)

Subj: Class Deviation – To Remove the Dollar Limitation for Set-asides under the Women-Owned Small Business (WOSB) Program

To: Associate Deputy Assistant Secretary for Procurement Policy, Systems, and Oversight (003A2) and Deputy Senior Procurement Executive,

1. **Purpose:** This class deviation establishes a deviation from the FAR to comply with Section 8(m) of the Small Business Act (15 U.S.C. 637 (m)) to remove the dollar limitations for set-asides to an economically disadvantaged woman-owned small business (EDWOSB) or a WOSB eligible under the Small Business Administration's (SBA) Women-owned Small Business Federal Contracting Program.
2. **Effective Date:** Immediately.
3. **Expiration Date:** Until rescinded.
4. **Background:**

On May 7, 2013, the Small Business Administration (SBA) issued an Interim Final Rule implementing Section 1697 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112-239. The interim rule removed the dollar limitation for set-asides under the WOSB Program. An interim FAR rule (FAR Case 2013-010) will be issued in the next Federal Acquisition Circular that will amend FAR 19.1505 (b) and (c) to remove the dollar limitations on the anticipated award price of a contract to a EDWOSB or WSOB concern eligible under the WOSB program. This change will allow contracting officers to restrict competition under the WOSB program at any dollar level, provided the other requirements for a set-aside under the WOSB program are met. Pending issuance of the interim FAR rule, this class deviation authorizes set-asides in accordance with the change to FAR 19.1505(b) and (c).

5. **FAR Sections Impacted:** FAR 19.1505 (b) and (c)

A. Current Policy:

FAR 19.1505 (b) and (c):

FAR 19.1505 - Set-aside procedures

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that—

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- (1) Two or more EDWOSB concerns will submit offers for the contract;
 - (2) The anticipated award price of the contract (including options) does not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing; or \$4 million, for all other contracts; and
 - (3) Contract award will be made at a fair and reasonable price.
- (c) A contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), for requirements in NAICS codes designated by SBA as substantially underrepresented if there is a reasonable expectation based on market research that—
- (1) Two or more WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), will submit offers;
 - (2) The anticipated award price of the contract (including options) will not exceed \$6.5 million, in the case of a contract assigned an NAICS code for manufacturing, or \$4 million for all other contracts; and
 - (3) Contract award may be made at a fair and reasonable price.

B. Need for Deviation:

Pending issuance of the interim FAR rule, this deviation, in accordance with FAR 1.404, will authorize set-asides in accordance with the change to FAR 19.505(b) and (c) (See Attachment).

C. New Policy:

This deviation will authorize contracting officers to restrict competition under the WOSB Program at any dollar level, provided the other requirements for a set-aside under the WOSB program are met.

D. Applicability:

This policy applies to all procurements subject to FAR Subpart 19.1505, Women-Owned Small Business Program.

6. Attachment:

Civilian Agency Acquisition Letter 2013-03, Class Deviation from the Federal Acquisition Regulation (FAR) to Remove the Dollar Limitation for Set-asides under the Women-owned Small Business (WOSB) Program.

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7. **Additional Information:** Questions or comments regarding this class deviation may be directed to Procurement Policy Service, at (202) 632-5288 or VA.Procurement.Policy@va.gov.

/s/Marilyn Harris

Attachment

Approved/~~Disapproved~~

/s/C. Ford Heard III
ADAS for Procurement, Policy,
Systems and Oversight

6/4/13

Date

Class Deviation

FAR Class Deviation, FAR 19.1505, Women-Owned Small Business (WOSB) Program Set-Aside Procedures

Findings

On May 7, 2013, the Small Business Administration (SBA) issued an Interim Final Rule implementing Section 1697 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112-239. The interim rule removed the dollar limitation for set-asides under the WOSB Program. An interim FAR rule (FAR Case 2013-010) will be issued in the next Federal Acquisition Circular that will amend FAR 19.1505 (b) and (c) to remove the dollar limitations on the anticipated award price of a contract to a EDWOSB or WSOB concern eligible under the WOSB program. This change will allow contracting officers to restrict competition under the WOSB program at any dollar level, provided the other requirements for a set-aside under the WOSB program are met. Pending issuance of the interim FAR rule, this class deviation authorizes set-asides in accordance with the change to FAR 19.1505(b) and (c).

The Department of Veterans Affairs (VA) is issuing this class deviation to provide its Acquisition Workforce with the most up to date Statutory guidance. Without the class deviation, the VA Acquisition Workforce is operating with the conflicting language between the mandatory Public Law 112-239 and FAR 19.1505 (b) and (c).

The Class Deviation (Attachment), provided with the aforementioned CAAC letter, allows agencies to deviate from WOSB Set-aside procedures outlined in FAR 19.1505 (b) and (c). This deviation shall only be used until the interim FAR rule (FAR Case 2013-010) is published.

Determination

In accordance with FAR 1.404 and VA Acquisition Regulation (VAAR) 801.404, I hereby issue a class deviation to authorize contracting officers to restrict competition under the WOSB Program at any dollar level, provided the other requirements for a set-aside under the WOSB program are met.

/s/C. Ford Heard III
Deputy Senior Procurement Executive

6/4/13
Date